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FM

Specialists in Communications Equipment
1914 Colvin Boulevard
Tonawanda, New York 14150
(716) 832-2026 • FAX (716) 832-7930

October 29, 1999

Magalie R. Salas
Secretary
Federal Communications Commission
TW-A325
Washington, D.C. 20554

EX PARTE OR LATE FILED

EX PARTE

Re: WT Docket No. 99-87

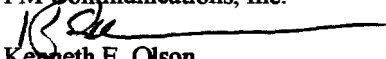
Dear Ms. Salas:

On behalf of FM Communications, Inc. ("FM") and pursuant to Section 1.1206 of the Federal Communications Commission's ("FCC") Rules, this letter constitutes notice that FM submitted the attached letter to Thomas Sugrue, Chief of the Wireless Telecommunications Bureau, on October 29, 1999.

An original and one copy of this letter and attachment have been filed with the Secretary pursuant to Section 1.1206. Should any questions arise in connection with this notification, please do not hesitate to contact the undersigned.

Respectfully submitted,

FM Communications, Inc.


Kenneth E. Olson
President

Attachment
cc: Tom Sugrue

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October 29, 1999

Mr. Thomas Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-C207
Washington, D.C. 20554

RE: WT Docket No. 99-87

Dear Mr. Sugrue:

Pursuant to Section 1.1206 of the Rules of the Federal Communications Commission ("Commission"), FM Communications, Inc. ("FM") respectfully submits this *ex parte* presentation in the above-captioned proceeding. FM is providing this information to demonstrate that the existing licensing and service rules for Business and Industrial/Land Transportation ("B/ILT") frequencies restrict economic use of the spectrum, improperly interfere with marketplace functions, and prohibit license transfers and assignments that are in the public interest. The Commission, therefore, should permit flexible use of B/ILT channels and free alienation of the licenses to promote competitive, marketplace transactions in the public interest.

FM is a Specialized Mobile Radio ("SMR") provider in the Buffalo, New York area providing trunked, Commercial Mobile Radio Service ("CMRS") services using SMR frequencies. FM also operates a community repeater using B/ILT channels for the benefit of approximately two dozen private licensees (the "Customers"). The Customers are engaged in businesses such as refuse hauling, paving, transportation, armored car services, and non-profit animal welfare and rescue. On June 25, 1997, FM sold its trunked SMR systems to a subsidiary of Nextel Communications, Inc. ("Nextel"), and also agreed to sell Nextel its B/ILT community repeater licenses.

These transactions, FM and the Customers concluded, would create greater efficiencies by allowing them to replace their antiquated community repeater service with the more modern, efficient and effective communications services provided by Nextel. Under the Commission's current rules, however, FM is prohibited from transferring control of its B/ILT licenses to Nextel for use in Nextel's Commercial Mobile Radio Services ("CMRS") system. FM respectfully requests that the Commission amend its rules to permit transactions such as the one FM has entered into with Nextel. By permitting FM to freely transfer and assign its B/ILT channels to carriers seeking to put these channels to their highest and best use – in this case, commercial services – the Commission promotes the public interest by ensuring that the spectrum is not artificially restricted to inefficient uses.

In the above-referenced docket, the Commission is implementing the Balanced Budget Act of 1997 ("97 Budget Act"), which expanded its auction authority to spectrum bands currently allocated for non-public safety uses. In considering the extent to which the "97 Budget Act expanded its authority, the Commission received comment from numerous industry participants on whether B/ILT frequencies should be assigned via competitive bidding and whether eligibility for those auctions should be open to both private and commercial users. Moreover, the Commission incorporated the record of and sought further comment on Nextel's waiver requests to permit assignments and transfers of B/ILT channels to Nextel for use in its CMRS system.

FM submits herein that today's competitive wireless telecommunications marketplace, as well as the '97 Budget Act, requires that the Commission make B/ILT spectrum available to all potential licenses, both commercial and private, and auction these channels to the highest bidder pursuant to Section 309(j) of the Communications Act. Consistent with an auction open to both commercial and private entities, existing B/ILT licensees also should be permitted to enter into transactions that would freely assign B/ILT frequencies to other private or commercial entities.

A number of commenters in this docket support maintaining the status quo, *i.e.*, no auctions for B/ILT channels and continued limited eligibility. The status quo, *however, interferes with the marketplace and prevents freely-negotiated, arms-length* business transactions that ultimately would benefit consumers. FM's comments here are neither speculative nor hypothetical. On the contrary, the Commission's rules are currently hindering FM's ability to close a transaction that is in its own best economic interests, in the best interests of its customers and, ultimately, in the public interest since it transfers spectrum to a higher and better use by placing it in the hands of a party -- in this case, Nextel- that values it most highly.

Nothing in the communications Act or in today's increasingly competitive telecommunications marketplace requires or justifies continued limitations on B/ILT spectrum use. These regulatory restrictions are long outdated and must be eliminated. The Commission, therefore, should amend its rules to permit flexible spectrum use and promote the public interest by facilitating transactions such as the one FM is attempting to complete with Nextel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Olson', with a long horizontal flourish extending to the right.

Kenneth E. Olson
President